

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, February 09, 2017

Hearing Room 301

10:30 AM

1:15-13076 Leonora Manor, LLC

Chapter 11

#1.00 First and Final Application for Allowance of Fees and Reimbursement
of Expenses of Weintraub & Selth, APC as General Bankruptcy Counsel

Docket 93

Tentative Ruling:

Weintraub & Selth, APC ("Applicant"), counsel to the debtor and debtor in possession
- approve fees in the amount of \$61,726.31 and reimbursement of expenses in the
amount of \$2,150.11, pursuant to 11 U.S.C. § 330.

Note: No response has been filed. Accordingly, no court appearance by Applicant is
required. Should an opposing party file a late opposition or appear at the hearing, the
Court will determine whether further hearing is required and Applicant will be so
notified.

Party Information

Debtor(s):

Leonora Manor, LLC

Represented By
Daniel J Weintraub
James R Selth
Elaine Nguyen

**United States Bankruptcy Court
Central District of California
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1:00 PM

1:15-12608 Stacie Silver

Chapter 11

#2.00 Confirmation hearing re amended chapter 11 plan of reorganization
fr. 10/20/16; 12/8/16

Docket 68

***** VACATED *** REASON: Order ent 2/6/17 approving stip to cont to
3/16/17 at 2:00 p.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stacie Silver

Represented By
Andy C Warshaw
Richard L. Sturdevant

**United States Bankruptcy Court
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Hearing Room 301

1:00 PM

1:15-12608 Stacie Silver

Chapter 11

#3.00 Status conference re chapter 11 case

fr. 9/17/15; 3/17/16; 5/12/16; 7/28/16; 8/25/16; 10/20/16; 12/8/16

Docket 1

Tentative Ruling:

The status conference will be continued to **March 16, 2017 at 2:00 p.m.** to coincide with the continued hearing on the confirmation of the debtor's Second Amended Chapter 11 Plan.

If the debtor is not prepared to proceed with plan confirmation on March 16, 2017, the debtor must file a status report, supported by evidence, and serve it on all secured creditors, the 20 largest unsecured creditors and the United States Trustee, 14 days prior to the continued status conference date.

Appearances on February 9, 2017 are excused.

Party Information

Debtor(s):

Stacie Silver

Represented By
Andy C Warshaw

**United States Bankruptcy Court
Central District of California
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Thursday, February 09, 2017

Hearing Room 301

1:00 PM

1:16-12097 N.E. Designs, Inc.

Chapter 11

#4.00 Status conference re chapter 11 case
fr. 10/6/16

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

N.E. Designs, Inc.

Represented By
Sandford Frey
Stuart I Koenig

**United States Bankruptcy Court
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Hearing Room 301

1:00 PM

1:16-12203 Alfredo Gonzalez Villapando

Chapter 11

#5.00 Disclosure statement hearing re chapter 11 plan of reorganization

Docket 34

Tentative Ruling:

Service/Notice. The debtor has not served notice of the disclosure statement ("DS") hearing on the Internal Revenue Service ("IRS") in accordance with Local Bankruptcy Rule 2002-2(c) and Fed. R. Bankr. P. 5003(e) and used the addresses set forth in the "Register of Federal and State Government Unit Addresses [F.R.B.P. 5003(e)]" listed in the Court Manual under Appendix D, available on the Court's website, www.cacb.uscourts.gov, under "Rules & Procedures." In accordance with the foregoing, notice of any future contested matter or adversary proceeding involving the IRS must be served at each of the following addresses:

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

United States Attorney's Office
Federal Building, Room 7516
300 North Los Angeles Street
Los Angeles, CA 90012

United States Department of Justice
Ben Franklin Station
P. O. Box 683
Washington, DC 20044

Cash Collateral. Deutsche Bank National Trust Company ("Deutsche Bank") notes that the deed of trust as to 6501 Franrivers, West Hills, CA 91307 ("6501 Franrivers") contains an assignment of rents provision. Accordingly, any rents collected by the debtor as to 6501 Franrivers are Deutsche Bank's cash collateral. However, it appears that the debtor has not segregated or accounted for this cash collateral. In addition, the debtor appears to have used \$3,562.34 of Deutsche Bank's cash collateral without

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CONT... **Alfredo Gonzalez Villapando**
consent or Court approval.

Chapter 11

Valuation of the Properties. Creditors and the debtor must be prepared to discuss a timetable for obtaining updated appraisals of the three real properties at issue (4250 Alonzo Avenue, Encino, CA 91316; 4615 Alonzo Avenue, Encino, CA 91316; and 6501 Franrivers), as well as a continued hearing date for approval of the DS.

New Value. Creditors argue that the debtor will be unable to provide sufficient "new value" to invoke the "new value exception" to the absolute priority rule. Under 11 U.S.C. § 1129(b)(1), a plan must be fair and equitable with respect to each class of impaired claims that has not accepted the plan. Individual chapter 11 debtors must satisfy the absolute priority rule. *Zachary v. California Bank & Trust*, 811 F.3d 1191, 1199 (9th Cir. 2016). The "new value exception" to the absolute priority rule provides that junior classes may receive property or retain interests in the debtor to the extent that they contribute substantial new capital to the estate, even where the plan does not pay senior classes in full. *See Bonner Mall P'ship v. U.S. Bancorp Mortg. Co. (In re Bonner Mall P'ship)*, 2 F.3d 899, 906 (9th Cir. 1993). Any new value contributed must be substantial in comparison to "(1) the total unsecured claims against the debtor, (2) the claims being discharged, or (3) the dividend being paid on unsecured claims by virtue of the contribution." *Liberty Nat'l Enter. v. Ambanc La Mesa Ltd. P'ship (In re Ambanc La Mesa Ltd. P'ship)*, 115 F.3d 650, 655 (9th Cir. 1997) (citation omitted). In addition, the new value contribution "(1) must consist of money or property which is freely traded in the economy, and (2) must be a present contribution, taking place on the effective date of the Plan rather than a future contribution." *In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d at 655.

Here, the debtor's proposed "new value" consists of monthly contribution payments by family members in the amount of \$1,500 for the duration of the plan. (*See* DS, Exh. A.) However, only the contribution on the effective date of the plan—but not the future contributions—count toward the new value exception. *See In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d at 655. In addition, the proposed new value does not appear to be sufficiently "substantial." A payment of \$1,500 on the effective date would only represent 0.13% of the approximately \$1,181,264.90 in unsecured claims scheduled by the debtor (which amount includes the unsecured portions of the claims secured by the debtor's real properties). In *In re Ambanc La Mesa*, the Ninth Circuit Court of Appeals held that a new value contribution of \$32,000 that was less than 0.5% of a total unsecured debt of approximately \$4 million was insubstantial as a

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CONT... Alfredo Gonzalez Villapando

Chapter 11

matter of law. *Id.* Since the debtor's proposed new value contribution currently appears to be only 0.13% of the total unsecured debt, the new value is similarly insubstantial as a matter of law and thus cannot satisfy the new value exception to the absolute priority rule.

Debtor's Cash Flow Projections. In light of the creditors' objections to the DS, the debtor must break down cash flow per each real property and account for any projected monthly taxes or insurance payments.

Los Angeles City Attorney's Office, Office of Finance, Audit Section ("City Attorney") claim. The DS does not address the City Attorney's priority claim in the amount of \$2,008.24. (*See* proof of claim 14-1.)

Franchise Tax Board ("FTB") claim. The DS erroneously states that the priority amount of the FTB's claim is \$1,397.93. However, in proof of claim 18-1, the priority amount of the FTB's claim is stated as \$151.20. In addition, the DS erroneously states that the secured amount of the FTB's claim is \$11,429.72. The correct secured amount is \$11,864.74.

Party Information

Debtor(s):

Alfredo Gonzalez Villapando

Represented By
Giovanni Orantes

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1:00 PM

1:16-12203 Alfredo Gonzalez Villapando

Chapter 11

#6.00 Status conference re chapter 11 case

fr. 10/13/16

Docket 1

Tentative Ruling:

Has the debtor filed his income tax returns for 2015? Is the debtor current on quarterly fees payable to the United States Trustee?

Party Information

Debtor(s):

Alfredo Gonzalez Villapando

Represented By
Giovanni Orantes

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1:17-10097 Sweetwater Malibu Inc

Chapter 7

#7.00 Order to show cause re: dismissal

Docket 6

Tentative Ruling:

With respect to all real property of this estate (the "Property"), the Court will terminate the automatic stay pursuant to 11 U.S.C. §§ 105(a) and 362(d)(1).

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

As to the balance of the issues raised in the Court's Order to Show Cause, such as the dismissal of this case, the Court will continue this hearing to **2:00 p.m. on March 9, 2017**, to be heard with the chapter 7 trustee's motion for substantive consolidation [doc. 10] and motion to approve sale of real property [doc. 11].

The Court will prepare the order.

Party Information

Debtor(s):

Sweetwater Malibu Inc

Pro Se

Trustee(s):

Diane Weil (TR)

Pro Se

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2:00 PM

1:14-11024 Royal Dining Catering, Inc.

Chapter 7

#8.00 Objection to claim number 16
filed by claimant State Compensation Insurance Fund

fr. 3/17/16; 5/12/16; 6/16/16(stip); 8/11/16(stip);

stip filed 12/7/16

Docket 768

***** VACATED *** REASON: Order approving stip to dismiss entered
12/12/16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Royal Dining Catering, Inc.

Represented By
Danielle A Pham
Eve H Karasik
Eric D Goldberg
Robert P Goe

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2:00 PM

1:14-11024 Royal Dining Catering, Inc.

Chapter 11

#9.00 Objection to claim number 8
filed by claimant Sysco Ventura Inc.

fr. 3/17/16(stip); 5/12/16(stip); 6/16/16 (stip); 8/25/16(stip);

Stip filed 12/7/16

Docket 762

***** VACATED *** REASON: Order approving stip to dismiss entered
12/12/16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Royal Dining Catering, Inc.

Represented By
Danielle A Pham
Eve H Karasik
Eric D Goldberg
Robert P Goe

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Thursday, February 09, 2017

Hearing Room 301

2:00 PM

1:15-12466 Alexander Bidny

Chapter 7

#10.00 Trustee's Motion for an Order (1) Approving sale of the real property commonly known as 14159 Dickens Street, Unit 210, Sherman Oaks, CA 91423; (2) Authorizing the Trustee to sell property free and clear of all liens, claims, encumbrances and interests in such property pursuant to 11 U.S.C. section 363(f); (3) Approving the proposed overbid procedure; (4) Determining that buyer is entitled to section 363(m) Protection; and (5) Approving the real estate brokers' commission

fr. 1/19/17

Docket 81

Tentative Ruling:

Grant.

Assuming the debtor has standing to object to the sale, the debtor has not set forth any arguments that would preclude the Court's approval of the proposed sale of the subject real property located at 14159 Dickens Street, Unit 210, Sherman Oaks, California 91423 (the "Property"). The debtor asserts, without evidence, that the chapter 7 trustee (the "Trustee") may be able to sell the Property for a higher price.

The record demonstrates that the real estate broker employed by the Trustee diligently marketed the Property. Declaration of Bruce Kurnik [doc. 94], ¶¶ 6-14. Mr. Kurnik listed the Property on several websites and began with a listing price of \$530,000. *Id.*, ¶¶ 7-10. From May 13, 2016 until the present, Mr. Kurnik also installed signage outside the Property. *Id.*, ¶ 12. Moreover, the sale is subject to overbid as outlined in the Trustee's motion. Based on these facts, the sale is fair and reasonable, and the Court will overrule the debtor's objections.

The Court will sustain the Trustee's objections to the debtor's exhibits.

The Trustee must submit an order within seven (7) days.

Party Information

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CONT... Alexander Bidny

Chapter 7

Debtor(s):

Alexander Bidny

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Doah Kim
Amy L Goldman

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2:00 PM

1:15-13076 Leonora Manor, LLC

Chapter 11

#11.00 Motion to dismiss chapter 11 case and to authorize concurrent payment of allowed claims

Docket 95

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Leonora Manor, LLC

Represented By
Daniel J Weintraub
James R Selth
Elaine Nguyen

**United States Bankruptcy Court
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2:00 PM

1:16-10024 Paulette Vonetta Moses

Chapter 7

#12.00 Trustee's Motion for order (1) Approving Sale of the real property commonly known as 18241 Friar St., Tarzana, CA 91335; (2) Authorizing the Trustee to sell real property of the estate; (3) Approving proposed overbid procedure; (4) Determining that buyer is entitled to §363(m) protection

Docket 260

Tentative Ruling:

Grant.

The debtor has not cited authority that she is entitled to purchase the estate's interest in the subject real property for less than \$20,000.00, which is the price she agreed to pay in the parties' written purchase agreement.

The debtor also requests that the Court preclude overbidding on the subject real property. However, the Court has an obligation "to assure that optimal value is realized by the estate under the circumstances." *In re Lahijani*, 325 B.R. 282, 288-89 (B.A.P. 9th Cir. 2005). The proposed overbid procedures are necessary to maximize recovery for creditors. Moreover, in the purchase agreement she signed, the debtor agreed to overbidding. As such, the Court will approve the sale and the overbid procedures set forth by the chapter 7 trustee.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Paulette Vonetta Moses

Pro Se

Trustee(s):

Amy L Goldman (TR)

Represented By
Lovee D Sarenas
Annie Verdries

**United States Bankruptcy Court
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2:00 PM

1:16-10099 Frank Adler and Lauren Adler

Chapter 7

#13.00 Motion for order authorizing Trustee to sell property free and clear of liens

Docket 115

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Frank Adler

Represented By
Derik N Lewis

Joint Debtor(s):

Lauren Adler

Represented By
Derik N Lewis

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, February 09, 2017

Hearing Room 301

2:00 PM

1:16-10486 Robert Marshall

Chapter 11

#14.00 Status conference re: chapter 11 case

fr. 5/5/16; 09/08/16; 9/15/16; 10/20/16; 11/10/16; 12/1/16; 1/12/17(stip)

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Marshall

Represented By
M Jonathan Hayes

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Thursday, February 09, 2017

Hearing Room 301

2:00 PM

1:16-10486 Robert Marshall

Chapter 11

#15.00 Disclosure statement describing chapter 11 plan of reorganization
fr. 12/1/16; 1/12/17(stip)

Docket 80

Tentative Ruling:

The debtor should address the following issues regarding the Court's evaluation of *Debtor's Disclosure Statement Describing Chapter 11 Plan of Reorganization* (the "Disclosure Statement") [doc. 80]:

First, as noted by secured creditor HSBC Bank USA, National Association ("HSBC") in its objection [doc. 96], assuming Class 2 creditors vote against *Debtor's Chapter 11 Plan of Reorganization* (the "Plan") [doc. 81], the Plan will violate 11 U.S.C. § 1129(b)(2)(B), otherwise known as the "Absolute Priority Rule." *See In re Zachary*, 811 F.3d 1191 (9th Cir. 2016) (holding that the Absolute Priority Rule applies to individual debtors). Pursuant to *Zachary*, the debtor cannot retain any prepetition property unless he pays his unsecured creditors in full. *Id.*, at 1199.

The Plan provides for payment to Class 2 unsecured creditors of 1.1% of their claims. Plan, p. 7. However, the Plan also provides that all of the debtor's property will revert in the debtor upon confirmation of the Plan. Plan, p. 10. Consequently, if Class 2 creditors vote against the Plan, it will not comply with 11 U.S.C. § 1129(b)(2)(B).

The Plan does not provide for payment to the Los Angeles County Tax Collector, which filed a proof of claim asserting a secured claim in the amount of \$8,682.20.

The Plan also does not provide for payment to the Internal Revenue Service (the "IRS"), despite the fact that the IRS' amended proof of claim, filed on August 8, 2016, asserts a claim in the amount of \$11,499.85, with \$8,638.61 of the claim entitled to priority treatment.

The "monthly average" calculation in Exhibit D to the Disclosure Statement is incorrect. The average monthly income actually amounts to \$7,346.40, not \$6,122.

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CONT... Robert Marshall

Chapter 11

The average monthly disbursements amounts to \$7,100.40, not \$5,917. In any amended disclosure statement, the debtor should use more recent monthly operating reports for his calculations.

Party Information

Debtor(s):

Robert Marshall

Represented By
M Jonathan Hayes
Roksana D. Moradi

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Hearing Room 301

2:00 PM

1:16-10621 Guadalupe Delgado

Chapter 7

#16.00 Debtor's motion to convert case from chapter 7 to 13

Docket 24

Tentative Ruling:

To be eligible as a debtor under chapter 13 of the Bankruptcy Code, the debtor must be an "individual with regular income." 11 U.S.C. § 109(e). An "individual with regular income" is defined as an "individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title...." 11 U.S.C. § 101(30).

When an individual intends to use family contributions to fund a chapter 13 plan, courts have looked to the following factors:

1. Non-debtor's relationship to debtor and motivation in making payments.
2. Non-debtor's long and undisputed history of making the contributions or otherwise providing support for debtor.
3. Unqualified commitment of non-debtor to make contributions in a specific amount for the duration of the chapter 13 plan.
4. Financial ability of the non-debtor to make the proposed contributions, including expenses and liabilities of the non-debtor that might take precedence over the contributions.

In re Mercer, 2015 WL 5735810, at *1-2 (Bankr. C.D. Cal. Sept. 29, 2015) (unpublished disposition) (citing *In re Deutsch*, 529 B.R. 308 (Bankr. C.D. Cal. 2015) (applying factors to feasibility of chapter 13 plan funded by family contributions).

Here, the debtor has provided evidence of recent monthly income from the two individuals from whom the debtor will receive contributions towards his chapter 13 plan: Gloria Hill and Marissa Ascencio. However, the debtor has not provided any evidence of Ms. Hill's and Ms. Ascencio's monthly expenses. Moreover, the debtor has not provided a signed declaration under penalty of perjury from either Ms. Hill or Ms. Ascencio demonstrating that these individuals agreed to contribute monthly income towards the debtor's chapter 13 plan. Further, there is no evidence that Ms.

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CONT... Guadalupe Delgado

Chapter 7

Hill or Ms. Ascencio have a history of providing for the debtor.

The debtor must supplement this motion with additional evidence demonstrating these factors. The Court will continue the hearing on this motion to **2:00 p.m. on March 16, 2017**. The debtor must file a supplemental brief with the supporting evidence no later than **February 23, 2017**. Any response by the chapter 7 trustee must be filed no later than **March 2, 2017**.

Appearances are excused on February 9, 2017.

Party Information

Debtor(s):

Guadalupe Delgado

Represented By
Lauren Rode

Trustee(s):

David Seror (TR)

Represented By
Steven T Gubner

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Hearing Room 301

2:00 PM

1:16-13177 Martha L Del Cid

Chapter 7

#17.00 Trustee's motion to sell real property

Docket 28

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Martha L Del Cid

Represented By
Lauren Rode
James R Selth

Trustee(s):

Nancy J Zamora (TR)

Represented By
Wesley H Avery